

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CR. NO. 2:23-cr-20191-MSN-5

EMMITT MARTIN, III,  
TADARRIUS BEAN, DEMETRIUS  
HALEY, DESMOND MILLS, JR.,  
AND JUSTIN SMITH

Defendants.

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**DEFENDANT, JUSTIN SMITH'S, OBJECTION TO MAGISTRATE'S  
ORDER OF OCTOBER 31, 2023 (ECF NO.: 80)**

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**COMES NOW** Defendant, Justin Smith, (hereinafter Smith) pursuant to Rule 59(a) of the Federal Rules of Criminal Procedure and Rule 72.1(g) of the Local Rules of the United States District Court for the Western District of Tennessee and files this his objection to the Magistrate's Order of October 31, 2023, denying Smith's Motion to Modify Release Conditions, and in support of same would state as follows:

1. On October 30, 2023, Smith filed a Motion to Modify Release Conditions (ECF No.: 77).
2. In support thereof, Smith simply stated that the loss of his job as a police officer and reduction in income necessitated him being a stay-at-home caregiver for his infant child.

3. An Order of Reference (ECF No.:78) was then issued referring this matter to the United States Magistrate Judge.

4. On October 31, 2023, an Order from Magistrate Claxton was then issued denying the Motion to Modify Release Conditions indicating:

A review of the pretrial services report (D.E. # 31) does not indicate any health conditions that would prevent Mr. Smith from being gainfully employed. While the motion indicates that Mr. Smith would like to 'provide in home parental care for his infant son,' Mr. Smith was previously employed until earlier this year and was not at home caring for the now one year old child.

5. Respectfully, while at the hearing on Defendant, Tadarrius Bean's, Motion to Modify Conditions of Release, Magistrate Christoff indicated that she had been referred the Smith motion and was prepared to move forward on it when Magistrate Christoff was informed by AUSA, Elizabeth Rogers, and the undersigned that Magistrate Claxton had just that very same afternoon issued an Order denying the relief requested.

6. In the case at hand, and specifically, Smith was earning approximately \$70,000.00 per year prior to being arrested and charged as a result of his involvement in the death of Tyre Nichols.

7. Shanera Smith, Smith's wife, earns \$2,800.00 per month as a coder I.

8. Additionally, when Smith was employed as a police officer, he worked the night shift, and his wife worked the day shift. As such, daycare was needed because Smith would sleep during the day while his wife was working. Now that Smith is no longer employed, daycare is no longer needed or is a financial option because Smith can stay home and care for the child.

9. Because of the pending criminal charges, including second degree murder charges in state court and criminal civil rights violations in federal court, Smith is not very employable. However, aside from his employability, the family income and debt are such that it is necessarily more economical for Smith to remain home with the infant child than it is to pay for daycare, and it is in fact his employment in the raising of that child that equity and justice demands he be permitted to do so without running afoul the conditions of his release.

10. The undersigned has consulted with AUSA, David Pritchard, and he has no objection to the condition being removed.

11. In reality, there is no just cause to require the Smiths to enroll the infant in some sort of daycare program when the family is barely getting along on \$2,800.00 per month in income from Smith's wife's full-time employment.

Respectfully submitted,

SPARKMAN-ZUMMACH, P.C.

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Certificate of Service

The undersigned certifies that on the 1<sup>st</sup> day of November, 2023, a copy of the foregoing document was electronically filed with court clerk using the CM/ECF System which sent notification of such filing to all counsel of record.

*S/Martin Zummach*